



*Uunguu*  
*Wunambal Gaambera Country*  
UUNGUU COAST, KIMBERLEY, WESTERN AUSTRALIA



# MANAGING EXCLUSIVE POSSESSION

Presentation to AIATSIS Native Title Conference 6 June 2018  
Wunambal Gaambera Aboriginal Corporation and Roe Legal Services



## Presentation Objectives

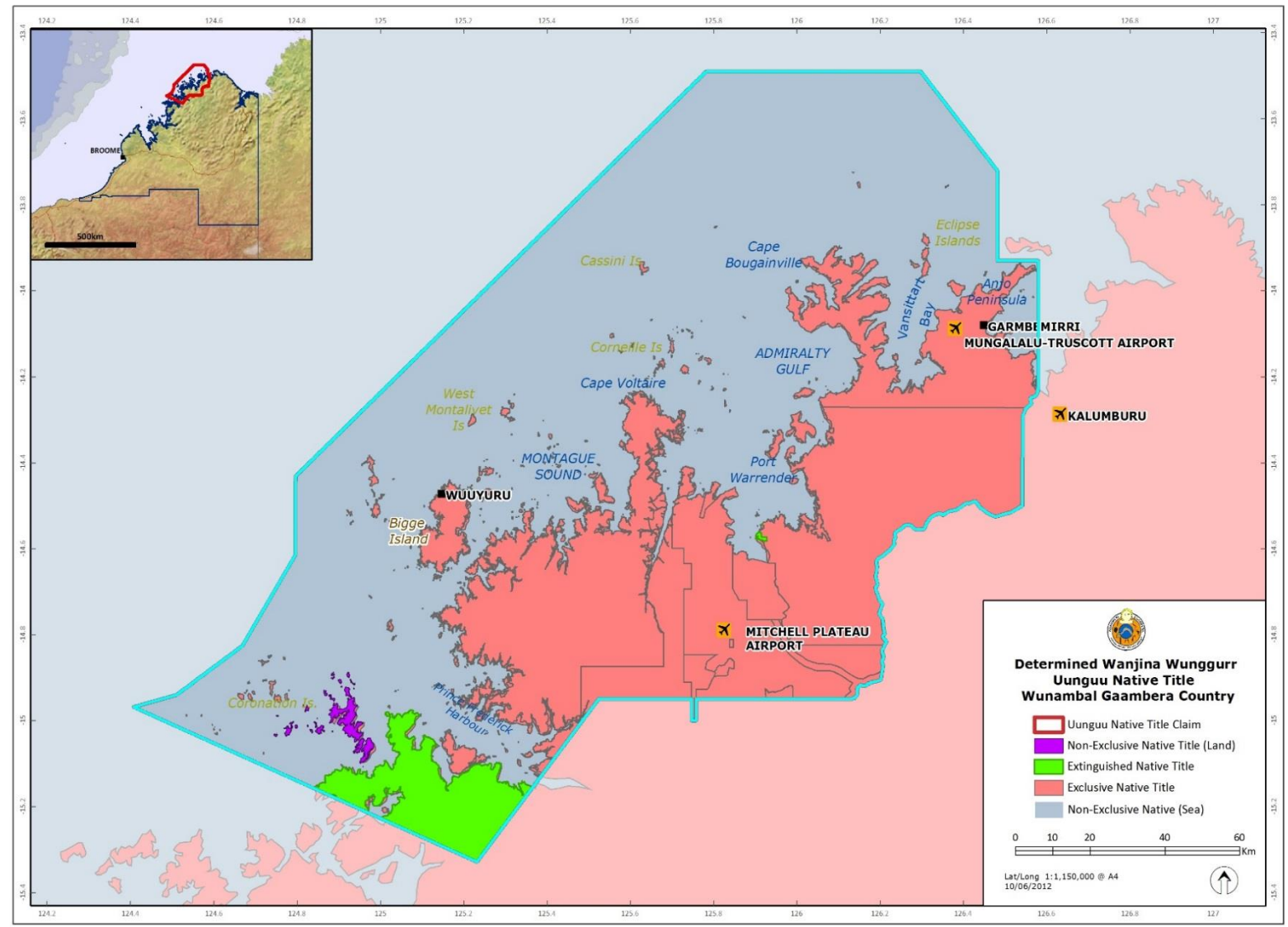
WGAC sharing experiences of managing Exclusive native title post Determination following a strategy to :

- assert and secure exclusive possession
- enable implementation of Healthy Country Plan Operations
- commit to the Uunguu Indigenous Protected Area principles
- promote, assist and inspire Traditional Owners to enjoy and live on their Graa country
- build on Exclusive native title by allowing right to lease land
- consider issues associated with the Non-extinguishment Principle



# Uunguu

UUNGUU COAST, KIMBERLEY, WESTERN AUSTRALIA



## Uunguu Determined Area

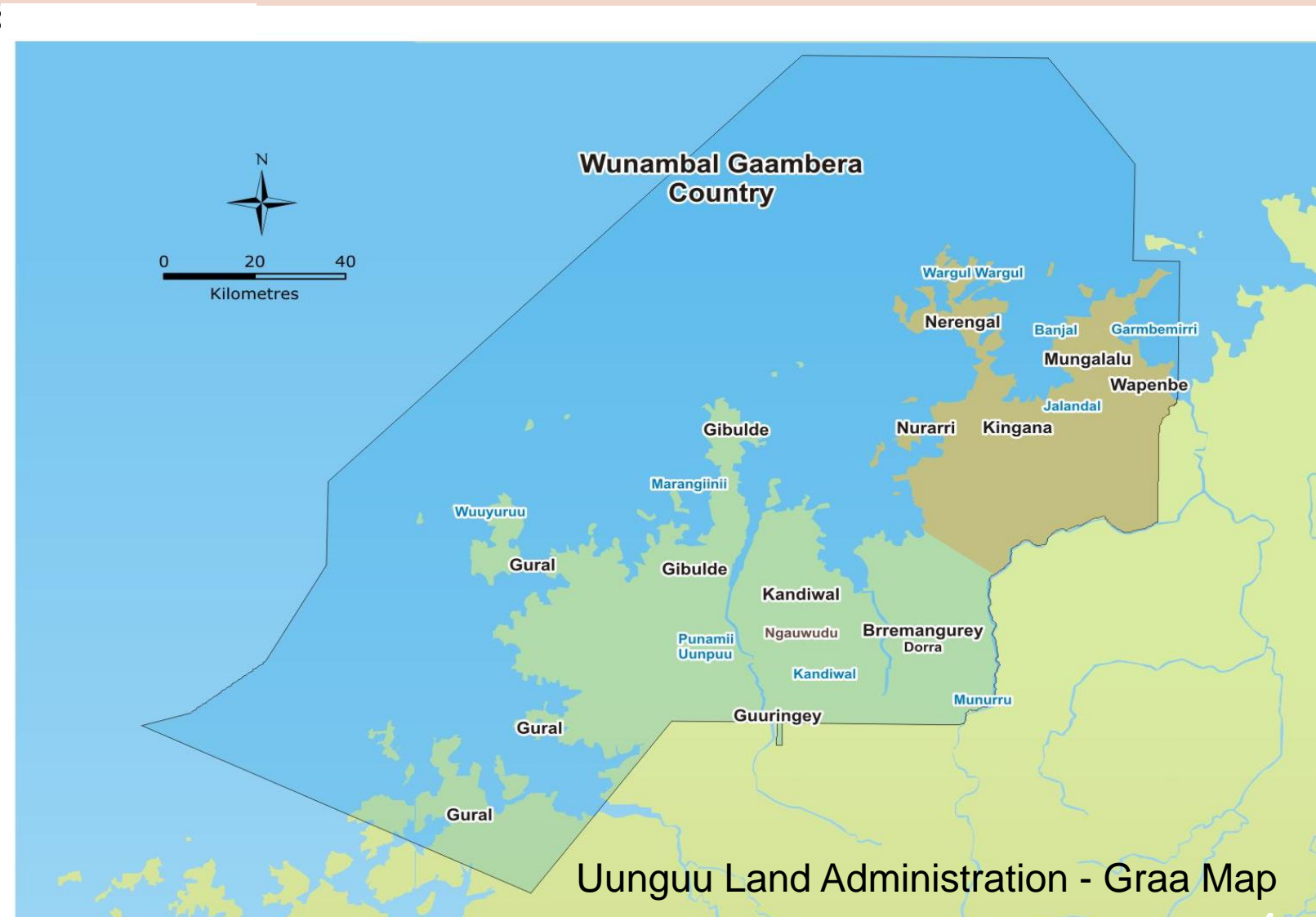
Area  
Land & Islands – 0.9 m Has  
Saltwater – 1.6 m Has

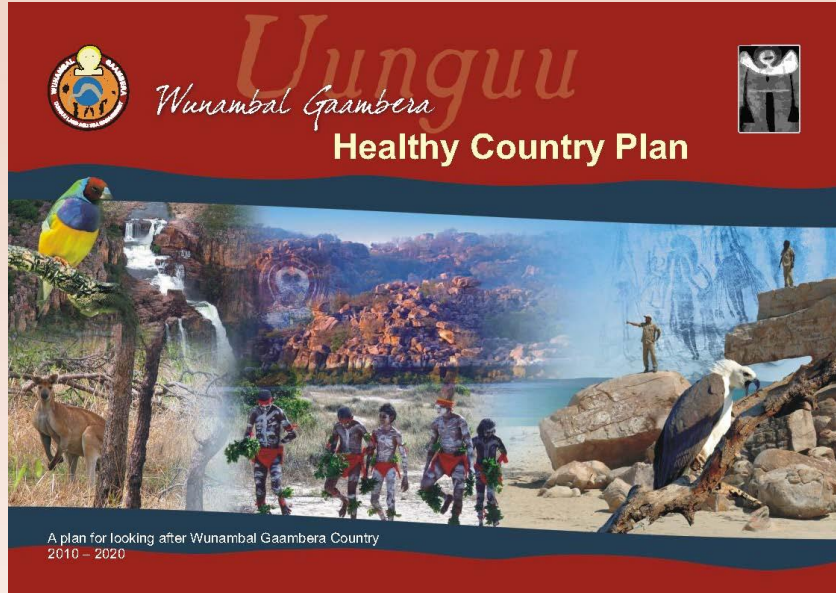
■ Exclusive Possession  
Determination 90 % of Wunambal  
Gaambera Country

Population - 650



## Native Title Decision Making





Our Wunambal Gaambera **Healthy Country Plan** 2010-20 is to

- help us to look after and keep our Country healthy and culture strong,
- build capacity and wealth of our families to live on and secure their futures from our Country.
- Elders and young people together made our Uunguu Vision

## UUNGUU VISION for HEALTHY COUNTRY

It is our vision that in ten years time:

- we will be looking after our country in the way of our Wanjina Wunggurr Law
- we will be living on and making business from our country
  - we will be protecting and sharing our cultural places as our traditional Law says
  - we will be using our traditional knowledge and Western science to care for our country so that no plants and animals are lost
- we will be respected as the proper owners and managers of Wunambal Gaambera Country
  - we will have ranger stations on country to help us look after Country.
  - we, and our future generations, will have the cultural knowledge of our elders
- our country will be giving us and our future generations a healthy life



**Uunguu Indigenous Protected Area**  
Managed to International Union for Conservation of Nature (IUCN) standards by  
**Wunambal Gaambera Aboriginal Corporation**

Plan of Management

Camping Prohibited  
Bushwalking  
Waterfalls  
Scenic Views  
Aboriginal Tourism Experience  
Pets Prohibited  
Firearms Prohibited

Australian Government

[www.wunambalgaambera.org.au](http://www.wunambalgaambera.org.au)

## Uunguu Indigenous Protected Area

Managed to International Union Conservation Nature (IUCN) Standards: in general

**75 % of Country is Protected,  
25% of Country is used -**

- for community purposes
- for enterprise and infrastructure
- build financial and operational capacity to maintain and sustain the Protected Area

UUNGUU INDIGENOUS PROTECTED AREA:  
WUNDAAGU (SALTWATER)  
PLAN OF MANAGEMENT  
2016-2020

Feb 2018

Wunambal Gaambera Aboriginal Corporation  
PO Box 499, Wunambalgaambera, WA 6710  
Phone: +61 8 9428 1000 Fax: +61 8 9428 1001 Email: [info@wunambalgaambera.org.au](mailto:info@wunambalgaambera.org.au)

Uunguu Visitor Management Plan  
(March 2014)

Uunguu Visitor Pass

Welcoming and managing visitors to Wunambal Gaambera Country

Wunambal Gaambera Aboriginal Corporation  
PO Box 499 Wunambalgaambera WA 6710  
Phone: +61 8 9428 1000 Fax: +61 8 9428 1001 Email: [info@wunambalgaambera.org.au](mailto:info@wunambalgaambera.org.au)

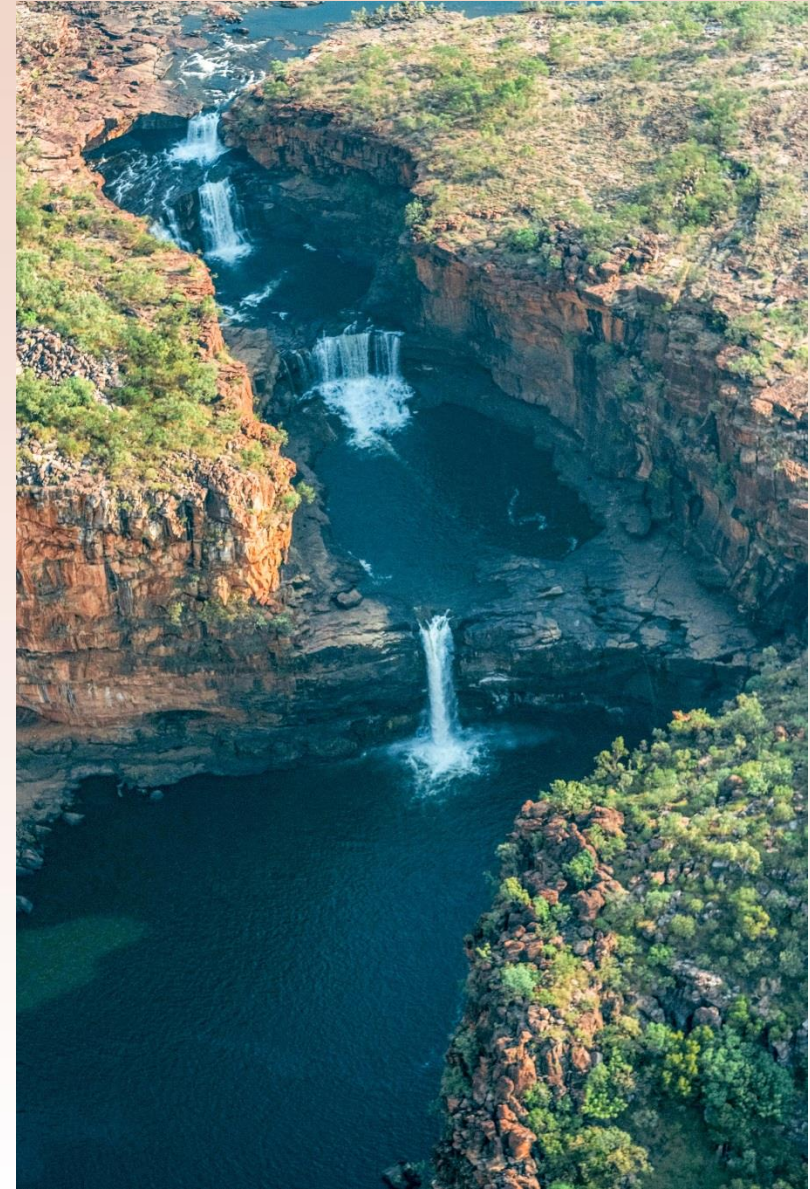
Wunambal Gaambera Healthy Country Plan is the Uunguu IPA Plan of Management. Sub Plans –  
Uunguu Visitor Management Plan  
Uunguu Wundaagu (Saltwater) Plan

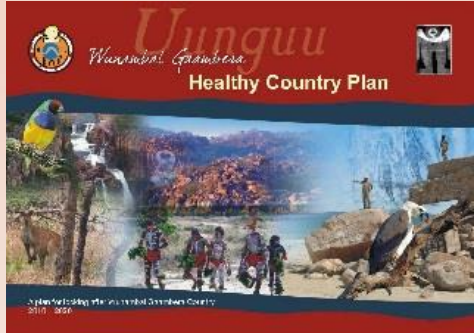
WGAC is working through land use zoning.



## Healthy Country Principles

- Healthy Country Operations are implemented at the landscape and seascape levels
- Wunambal Gaambera Healthy Country Plan is the prevailing plan of management
- Wanjina Wunggurr Cultural assets must stay within Wunambal Gaambera title and control
- Conservation estate sits within the Uunguu IPA Protected Zone



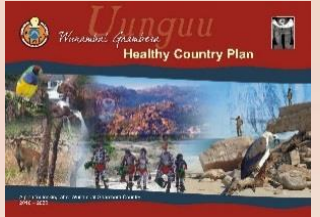


## Right Way Fire Program

- Early Dry Season burning is WGAC's landscape management tool – aerial and ground burning
- Mosaics of patch burns and fire breaks reduce damaging Late Dry Season lightning ignited hot fires
- Each Graa participates in Right Way Fire planning and operations with Uunguu Rangers
- \$ Benefit – reduced green house gas (Carbon) emissions sold as ACCUs >> helps pay for RWF operations
- Healthy Country or co-Benefit – sustainable habitats – monitoring operations

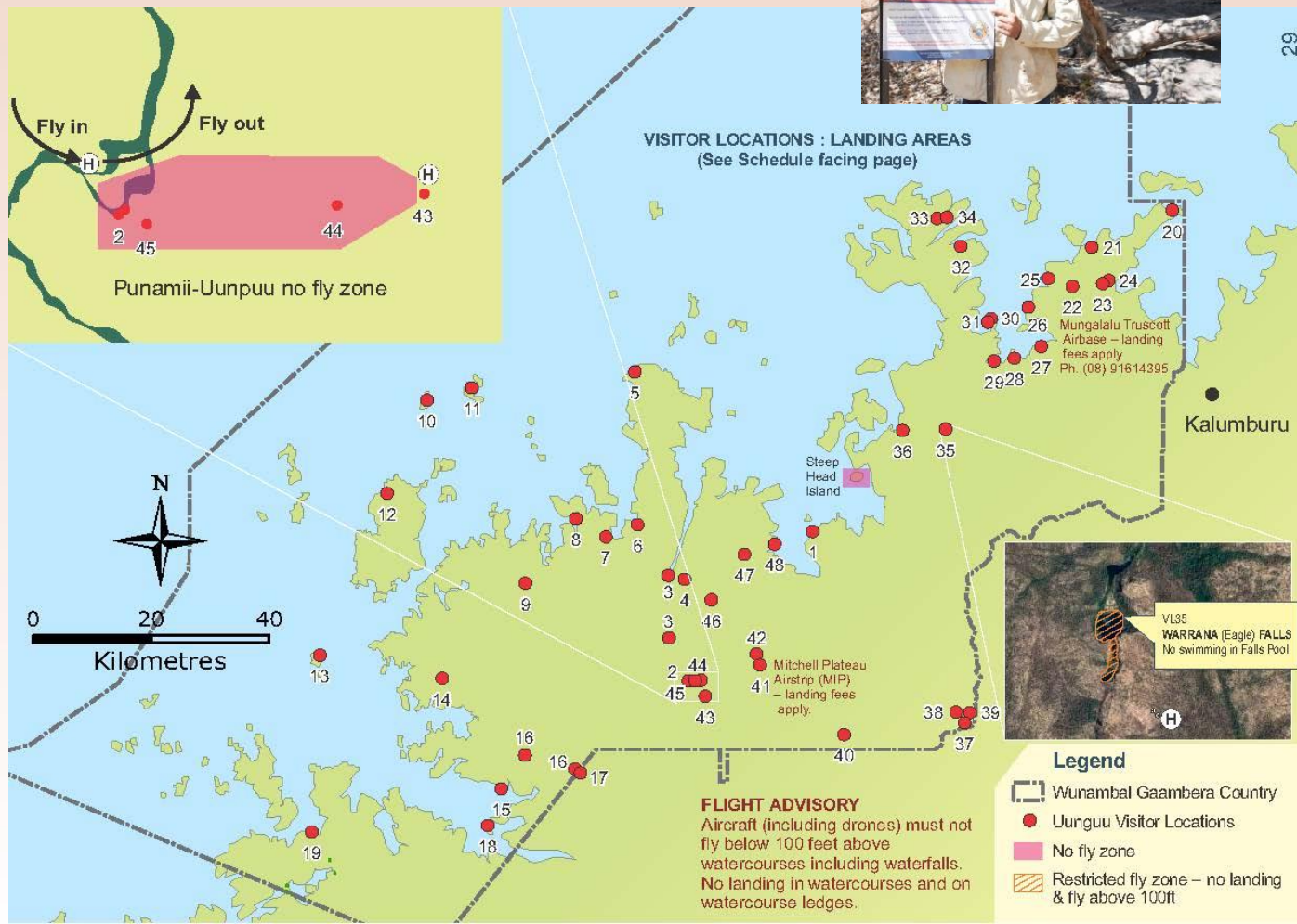






## Uunguu Visitor Management Plan

- Native Title holder permission access 50 cultural, natural, historical sites.
- Gain 15% participation in tourism industry (present value \$15m).
- On-line Uunguu Visitor Pass permit Tour Operators and Independents
- UVP prerequisite for Govt permits
- UVP Communal Need provides and resources : rents, UVP operations, monitoring, training – Rangers, guides & operator crew, support Wunambal Gaambera tourism enterprise development.





## WGAC Exclusive Possession Strategy - 2013

**Objective: Proactive and Inspiring approach to Land Use and Management - not Reactive**

### Goals/Objectives

- Protect High Conservation Value Areas from mining and other development.
- Right Way Fire Program
- Uunguu Visitor Management Plan
- Licence existing Land Users/Operators
- Obtain secure tenure for communities
- Obtain secure tenure for commercial development



## Outcomes of Strategy

Objective	Outcome	Alternative Tenure Required
Healthy Country – National Park	In negotiation	Yes
Healthy Country – Mining in Mitchell Plateau	Achieved (temporarily). The Temporary Reserve surrendered under the Alumina Refinery (Mitchell Plateau) Agreement (Termination) Act 2015. Clause 5C of this Act temporarily suspends mining in the area pending the creation of a national park. Mining leases still in place on Bougainville Peninsula.	Yes
Right Way Fire Program	Achieved. WGAC has continued to carry out the Right Way Fire Program which remains registered under the CCFI Act.	No
Uunguu Visitors Pass	Achieved. WGAC is currently completing registration of tour operators for the 2018 tourism season and receiving tour payments. Independent travellers purchasing UVP permits on-line and from agents.	No
Licence of existing Users	Achieved	No
Live on Country - Communities	In negotiation.(Successful ILUA for lease to Kandiwal Community of Mitchell Plateau Aboriginal Land Reserves). Precedent for other Graa tenures	Yes
Land for Commercial Developments and Infrastructure	Negotiation as required.	Yes



## Roadblocks to Full Enjoyment of Native Title

WGAC has identified two main issues which are preventing it from fully enjoying and proactively managing the determination area.

- The Non-Extinguishment Principle which provides that any new tenure supresses and prevails over native title rights
- Native title is said to be inalienable and therefore WGAC/WWPBC cannot give native title rights and interest to third parties (to develop land or communities).



## Non Extinguishment Principle and National Parks

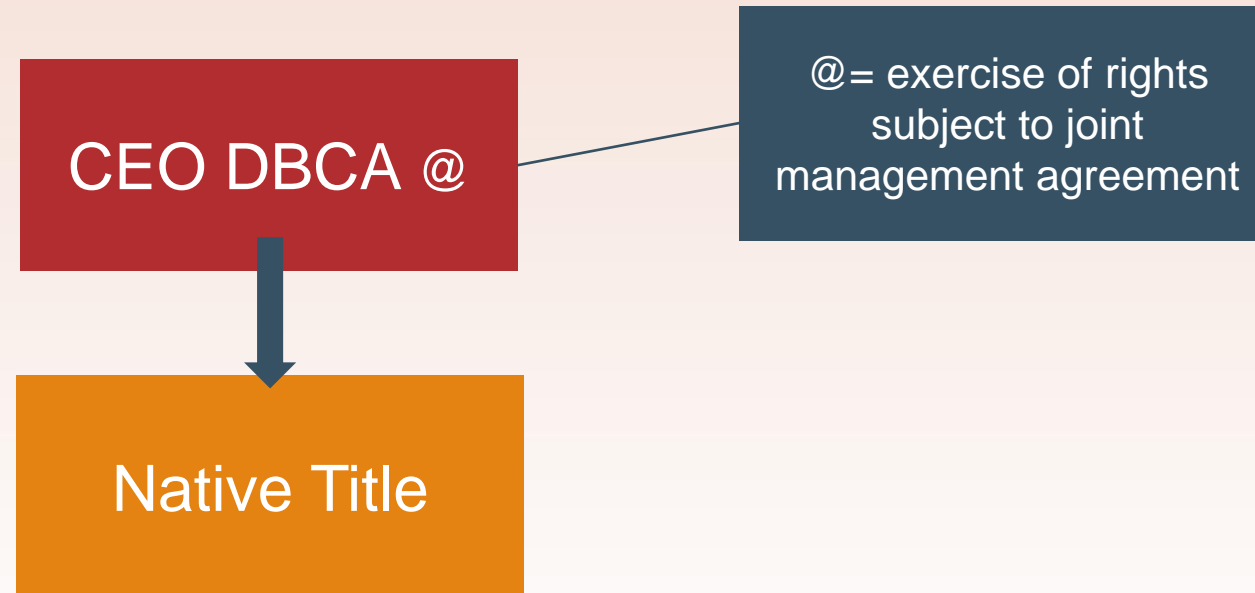
- High Conservation Areas (cultural and natural Icons) are of High Cultural Significance
- Both State and Traditional Owners Agree that these Areas need to be protected from mining and declared as national park within the Protected Zone of the Uunguu IPA
- Traditional Owners cannot culturally surrender hard fought exclusive native title rights / ownership over those areas to a third party (eg the Conservation Commission either jointly or otherwise).



## National Park – Non Extinguishment Principle Applies

High Conservation Area Protected from Mining

Native Title Rights permanently suppressed

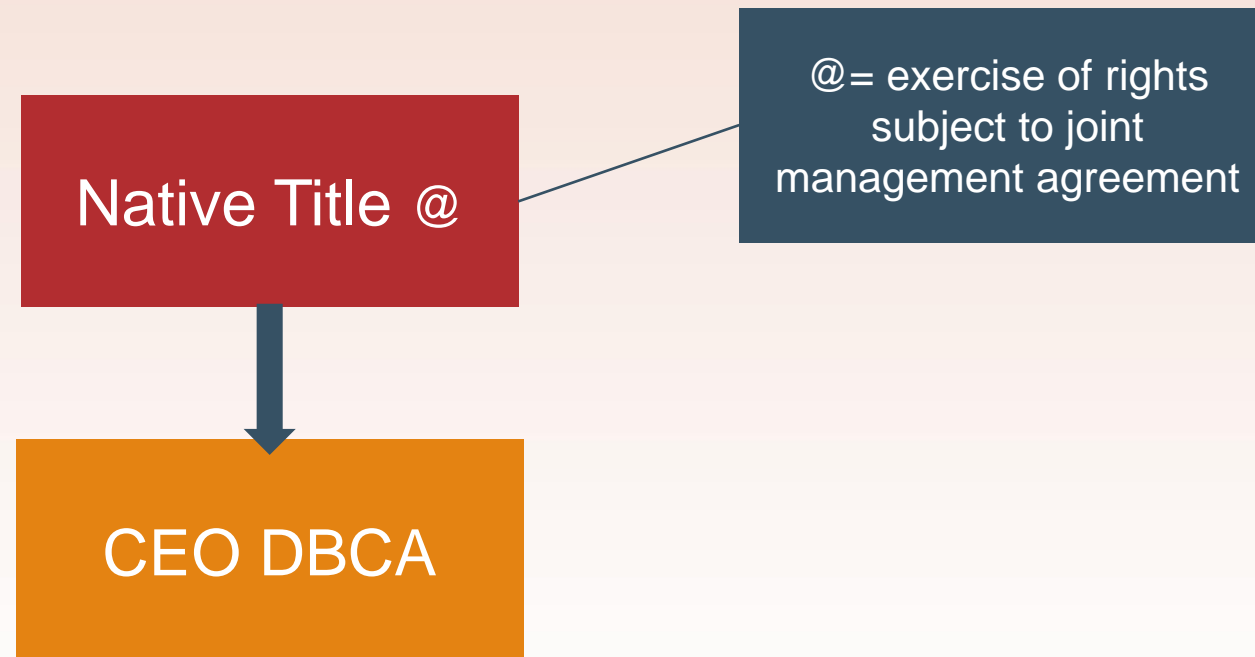




## National Park – Non Extinguishment Principle Does not Apply (Native Title Prevails)

High Conservation Area Protected from Mining

Native Title rights only impaired by joint management agreement





## Exclusive Native Title subject to Aboriginal Reserves

### Wunambal Gaambera Country

- 3 Class A Aboriginal reserves vested in Aboriginal Affairs Planning Authority (AAPA Part III) Cape Bougainville, Admiralty Gulf and Kunmunya (Rothsay Waters)
  - 3 Class C Reserves Mitchell Plateau - vested S33 Land Act 1933  
Yalgii (Doongan), Crystal Head (Warrender), Kandiwal  
Present Kandiwal ILUA leasing transaction to Kandiwal Traditional Owners
  - Aboriginal Lands Trust (ALT) holds management orders to all above reserves
- 
- WA Government ALT divestment policy
  - Principal divestment issue is transfer of full Part III powers (including mining and permit) powers to Native Title holders
  - WGAC Senior Counsel advice – Part III powers not affected by divestment.





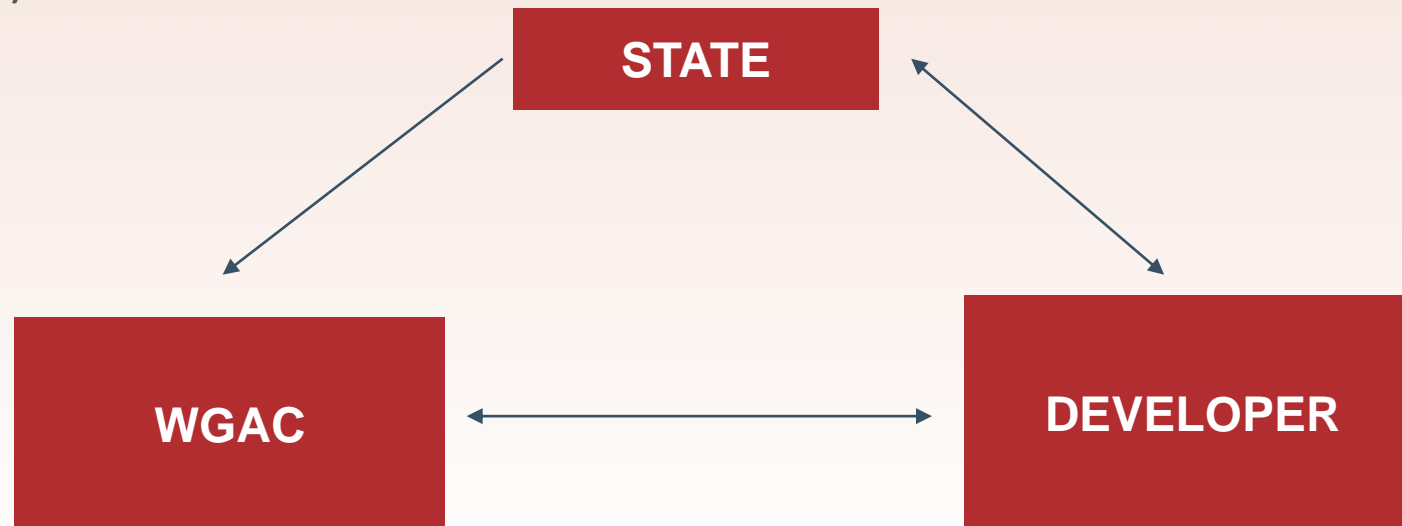
## Inalienability of Native Title

- Principle said to be derived from statutes for the protection of native title holders against colonists.
- Not consistent with traditional law and custom – Wunan
- Does not prevent issuing of licences or permissions to enter by Native Title holders
- Means that in order for third parties or communities to carry out development and make investments in infrastructure and fixed assets in the determination area they require tenure to be issued under the Land Administration Act.
- Current approach to grant of alternative tenure reactive rather than proactive.



## Alternative Tenure – Re Active Approach

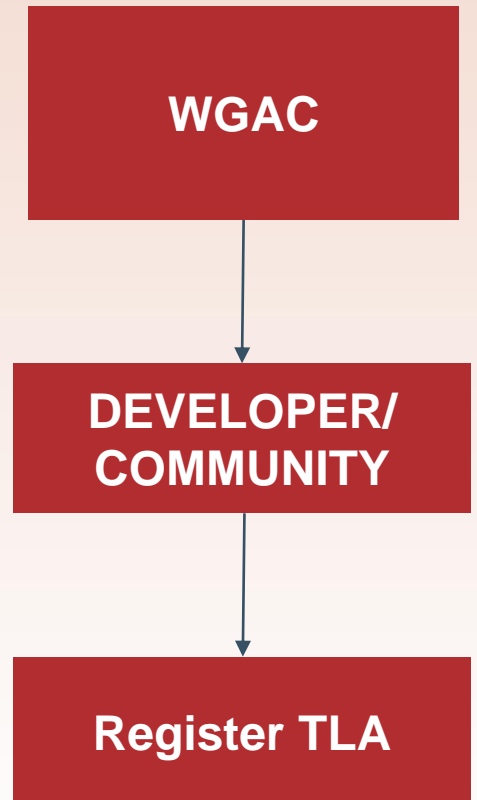
- State Grants Tenure to Third Party
- WGAC enters into Native Title Agreement with Third Party
- WGAC and Third Party enter into ILUA with State
- State becomes landlord of Determination area (to the detriment of native title)





## Alternative Tenure – Holistic and Proactive Approach – Perfecting Title

- State gives a form of tenure to Native Title holders that includes the power to lease.
- Native Title holders authorise grant of Leases to Graa and/ or Third Party
- Grant subject to appropriate Zoning and internal authorisation processes
- Advantages include
  - Certainty of being able to transact when necessary
  - Security of tenure
  - No ceding of underlying title
  - Low transaction costs
  - Registrable interest – Transfer of Land Act
  - Easily enforceable





## Layering of Tenures

### Simplest Options:

- Vesting of Pt III Reserves with power to lease
- Creation of s 41 Reserves with management order and power to lease
- Aboriginal freehold S83 and leasehold

### Obstacles

- Loss of Powers/Protections under Pt III AAPA Act (different views)
- Right of State to Cancel Reserve or Management Order



## Overcoming Obstacles

- State Agreement (under Government Agreements Act) that:
  - Ensures management orders and vesting of reserves cannot be revoked or cancelled;
  - Ensures Pt.III protections continue to apply to Aboriginal reserves.
- Provides certainty and security of tenure and allows native title holders to control their social and economic development.



## SUMMARY

- Demonstrated Wunambal Gaambera success in using and enjoying exclusive possession native title through Healthy Country Plan – Right Way Fire and Unguu Visitor Pass
- Opportunity exists to perfect the Protected Area Zone to meet IUCN standards (Unguu IPA and Conservation Estate) by looking beyond the non-extinguishment principle
- There are meaningful and practical steps the State can take to assist and perfect Wunambal Gaambera people's native title and security of tenure in the Wunambal Gaamber Unguu Determination Area